

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	NO. 06-96-01
v.	:	
	:	CIVIL ACTION
	:	NO. 10-2876
PEDRITO SANTIAGO MORETA	:	
	:	
	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

FEBRUARY 23, 2011

I. INTRODUCTION

Following a jury trial, Petitioner Pedrito Santiago Moreta ("Petitioner") was found guilty on all five counts for which he was indicted. On November 8, 2007, the Court sentenced Petitioner to a total of 421 months incarceration followed by a five year term of supervised release. Petitioner appealed to the United States Court of Appeals for the Third Circuit, which affirmed the Court's judgment. Thereafter, Petitioner filed a petition for certiorari with the Supreme Court of the United States. His petition was denied.

Having exhausted his means of direct review, Petitioner brings the instant motion pursuant to 28 U.S.C. § 2255, urging four grounds upon which this Court should vacate his conviction or sentence. For the reasons discussed below, the Court will deny Petitioner's motion without conducting a hearing.

II. BACKGROUND

Petitioner was indicted for his role in two attempted robberies on the same day and charged with: (1) Count One—conspiracy to interfere with interstate commerce by robbery in violation of 18 U.S.C. § 1951(a); (2) Count Two—Hobbs Act robbery in violation of 18 U.S.C. § 1951(a); (3) Count Three—carrying a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c); (4) Count Four—Hobbs Act robbery in violation of 18 U.S.C. § 1951(a); and (5) Count Five—carrying a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c).

On July 25, 2007, a jury convicted Petitioner of all charges. Thereafter, the Court sentenced Petitioner to a total of 421 months of incarceration followed by a five year term of supervised release. Petitioner's prison sentence included (1) 37 months on Counts One, Two, and Four to run concurrently; (2) 84 months on Count Three to run consecutively to Counts One, Two, and Four; and (3) 300 months on Count Five to run consecutively to Counts One, Two, Three, and Four. Petitioner's efforts to overturn his conviction via direct review were unavailing: the Third Circuit affirmed the Court's judgment on February 6, 2009, and the Supreme Court declined to grant certiorari on June 8, 2009.

Thereafter, on June 8, 2010, Petitioner filed the instant motion. (See doc. no. 223.) However, he did so on an

outdated form. Consequently, the Court ordered him to file his motion on the new form within thirty days, which Petitioner did on July 19, 2010. (See docs. no. 225; 230.) Following the Government's response, the instant motion is ripe for disposition.

III. DISCUSSION

Petitioner's motion raises four grounds for relief. Namely, that (1) the Court misinterpreted "second or subsequent conviction" as the term is used in 18 U.S.C. § 924(c)(1)(C) in sentencing Petitioner to 300 months imprisonment on Count Five; (2) the evidence as to Count Three of the indictment was insufficient; (3) the Third Circuit erred in holding that there was sufficient evidence as to Count Three; and (4) Petitioner received ineffective assistance of counsel because Petitioner's attorney failed to present a defense based on diminished capacity or insanity.

As outlined below, the first three arguments fail because they attempt to relitigate issues decided on appeal. The fourth argument is unavailing because the record does not support Petitioner's ineffective assistance of counsel claim. Consequently, despite the statutory presumption in favor of holding evidentiary hearings in connection with § 2255 motions, see 28 U.S.C. § 2255(b) ("Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall . . . grant a prompt

hearing"), Petitioner's claim will be denied without a hearing, see United States v. McCoy, 410 F.3d 124, 134 (3d Cir. 2005) (explaining that no hearing is required if the record clearly resolves the merits of the § 2255 motion).

A. Grounds One Through Three

Petitioner's § 2255 motion expressly acknowledges raising the issues asserted in grounds one and two in his direct appeal.¹ (Pet'r's Mot., at 6-7.) Both of these arguments were considered and rejected by the Third Circuit. See United States v. Moreta, 310 F. App'x 534, 536-37 (3d Cir. 2009).

Absent an intervening change in the law, see Sonneberg v. United States, No. 01-2067, 2003 WL 1798982 (3d Cir. Apr. 4, 2003), this procedural posture precludes the relief Petitioner now seeks insofar as grounds one and two are concerned, see United States v. DeRewal, 10 F.3d 100, 105 n.4 (3d Cir. 1993) (refusing to allow relitigation of claims that were raised and

¹ The first ground argues that 18 U.S.C. § 924(c)(1)(C)'s minimum 25 year sentence for a "second or subsequent conviction" cannot be applied where the two convictions were simultaneous. The second ground contends that there was insufficient evidence to sustain a conviction on Count Three because Petitioner did not himself use a firearm, and his actions were not sufficiently intertwined with the actions of the criminal participant who did. See United States v. Gordon, 290 F.3d 539, 547 (3d Cir. 2002) ("[W]e have held that a defendant can be convicted of aiding and abetting a violation of § 924(c)(1) without ever possessing or controlling a weapon if the defendant's actions were sufficiently 'intertwined with, and his criminal objectives furthered by' the actions of the participant who did carry and use the firearm." (quoting United States v. Garth, 188 F.3d 99, 113 (3d Cir. 1999))).

rejected on direct appeal); Government of Virgin Islands v. Nicholas, 759 F.2d 1073, 1074-75 (3d Cir. 1985) ("A section 2255 petition is not a substitute for an appeal . . . nor may it be used to relitigate matters decided adversely on appeal . . .").

And while Petitioner's argument concerning ground three is couched as a matter not raised on direct appeal, (see Pet'r's Mot., at 9), that argument fails for similar reasons. Indeed, in arguing that the Third Circuit "misinterpreted and misconstrued" his sufficiency of the evidence argument as to Count Three, Petitioner again attempts to relitigate an issue that has already been raised and decided.

Thus, the first three grounds asserted in Petitioner's § 2255 motion are without merit.

B. Ground Four

Petitioner's fourth and final ground for relief is trial counsel's alleged ineffective assistance. This claim, which is assessed under the two-pronged Strickland framework, is grounded in the Sixth Amendment right to "'effective assistance of counsel'—that is, representation that does not fall 'below an objective standard of reasonableness' in light of 'prevailing professional norms.'" Bobby v. Van Hook, 130 S. Ct. 13, 16 (2009) (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)).

1. Legal Standard

Under Strickland, Petitioner must make two showings to obtain relief. First, Petitioner must show that his lawyer's performance was deficient by identifying counsel's "acts or omissions" that were outside the bounds of "reasonable professional judgment." Strickland, 466 U.S. at 688, 690. The Court must decide whether the acts or omissions "were outside the wide range of professionally competent assistance." Id. at 690. The Court judges counsel's performance based on the case-specific facts, viewed as of "the time of counsel's conduct." Id. Under this first prong, a petitioner "must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id. at 689 (quoting Michel v. Louisiana, 350 U.S. 91, 101 (1955)).

Second, Petitioner must show "that the deficient performance prejudiced the defense," meaning that "counsel's errors were so serious as to deprive the defendant of a fair trial" with a reliable result. Id. at 687. Petitioner must therefore show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. A reasonable probability is defined as "a probability sufficient to undermine confidence in the outcome." Id. at 669.

2. Application

Petitioner launches his ineffective assistance argument based on trial counsel's failure to employ an insanity or

diminished capacity defense at trial. Pointing to the fact that his lawyer moved for an evaluation of Petitioner's competency to stand trial, (see doc. no. 48), and relied on Petitioner's psychological history during sentencing, Petitioner reasons that defense counsel should have also used Petitioner's mental history as a defense at trial. The record, however, conclusively demonstrates that Petitioner is not entitled to § 2255 relief on this basis.

To succeed on an insanity defense, Petitioner would have had to prove by "clear and convincing evidence" that he had a "severe mental disease or defect" that led him to be "unable to appreciate the nature and quality or the wrongfulness of his acts." 18 U.S.C. §§ 17(a) & (b). Petitioner proffers no evidence with which he could meet this burden or otherwise use his mental state to defend against the charges for which he was tried. Instead, Petitioner posits, in conclusory fashion, that his mental history could have been used in his defense. Under these circumstances, Petitioner cannot establish an ineffective assistance claim under Strickland.

Indeed, Petitioner cannot show counsel's performance was deficient because he cannot "overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Strickland, 466 U.S. at 689. After all, the expert appointed to evaluate Petitioner's competence for trial found Petitioner competent to stand trial in 2007 after considering the exact same mental history Petitioner

now claims should have been presented defensively at trial.

To be sure, the tests for insanity and competence are considerably different. Nevertheless, the fact that Petitioner's counsel received an expert report finding Petitioner to be capable of understanding his legal situation in 2007 would lead a reasonable lawyer to conclude that no one considering the same psychological history would determine that Petitioner could not appreciate the nature and quality or wrongfulness of criminal actions undertaken in 2005. See United States v. Robinson, No. 06-604, 2010 WL 3749475, at *4 (E.D. Pa. Sept. 24, 2010) (deeming ineffective assistance claim rooted in counsel's failure to raise an insanity defense to be "frivolous," explaining that "[t]he Court must rely on experienced defense counsel, two of which were at Defendant's side throughout . . . trial and sentencing, to bring forth a potential claim of insanity"); United States v. McShan, No. 00-111, 2006 WL 3192539, at *2 (S.D. W. Va. Aug. 17, 2006) (citing medical evaluation of competency to stand trial in rejecting petitioner's claim of ineffective assistance for failing to defend on diminished capacity grounds), adopted in relevant part, No. 03-0324, 2006 WL 3192532 (S.D. W. Va. Nov. 1, 2006).

At a minimum, the competency report defense counsel helped Petitioner obtain shows that "this case does not involve a failure to secure adequate information concerning a defendant's mental status and possible psychiatric infirmities." McShan, 2006 WL 3192539, at *2. And because Petitioner seeks relief

based on counsel's decisions concerning precisely the same mental health information outlined in the competency report, counsel's trial strategy is entitled to a degree of deference. Cf. United States v. Kauffman, 109 F.3d 186, 190 (3d Cir. 1997) (concluding counsel was ineffective where he failed to "pursue an investigation of a letter from [the defendant's] treating psychiatrist which stated that [the defendant] was manic and psychotic at the time of the commission of the offense" because only an investigation and "some legal research" could be "characterized as 'strategy'").

For these reasons, Petitioner cannot show deficient performance as to satisfy Strickland's first prong.² Consequently, the Court finds the fourth ground asserted in Petitioner's motion to be without merit.

IV. CONCLUSION

For the foregoing reasons, the Court will deny Petitioner's § 2255 motion without holding an evidentiary hearing. An appropriate Order will follow.

² Moreover, Petitioner has not presented any basis for believing that counsel's failure to pursue the defenses in question had an impact on the trial result. On the contrary, the competency report demonstrates that Petitioner's defenses would have likely failed. It would be challenging, to say the least, to establish legal insanity by clear and convincing evidence using a mental history which was insufficient to render Petitioner incompetent to stand trial.

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O R D E R

AND NOW, this 23rd day of February, 2011, it is hereby

ORDERED:

1. Petitioner's motion to vacate/set aside/correct sentence, pursuant to 28 U.S.C. § 2255, (doc. no. 230) is **DENIED**;
2. Petitioner's petition will be **DISMISSED**;
3. A certificate of appealability shall not issue;³
4. This case shall be marked **CLOSED**.

³ A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a certificate of appealability ("COA"). Id. "A [COA] may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). To make such a showing, "'petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong,'" Tennard v. Dretke, 542 U.S. 274, 282 (2004) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), or that "the issues presented were 'adequate to deserve encouragement to proceed further,'" Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (quoting Slack, 529 U.S. at 484). Petitioner has not made the requisite showing in this case.

AND IT IS SO ORDERED.

S/Eduardo C. Robreno

EDUARDO C. ROBRENO, J.